

John A. Kaufhold

v.

Town of Peterborough

Docket No.: 16141-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$75,000 (land \$22,100; buildings \$52,900) on a .28-acre lot with a residential multi-unit home (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) this Property is within 1,000 feet of the A & P store and the view and traffic make this Property less desirable;

- (2) there is no useable land area and the house interior has not been remodeled since the 1960's and both interior and exterior need repairs;
- (3) the back of the lot has a steep slope to the river, a right-of-way for other properties, the Town has a sewer easement over the lot, and a conservation easement restricts the use of the Property;

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- (4) an April 1995 appraisal (Chapman) estimated the market value to be \$47,000; and
- (5) based on the appraised value, the Property is assessed at 160% of its value.

The Town argued the assessment was proper because:

- (1) upon review of the Taxpayer's application for abatement, the land assessment was reduced 15% for the right-of-way and easement and the "old" garage value was reduced to \$800;
- (2) the appraiser's sales were not arm's-length transactions;
- (3) the Town found no adjustment was warranted for the slope because there are similar conditions along most of the lots and the market has not recognized any adjustment in value;
- (5) adjustments were made for the fact that the Property is adjacent to Route 101 and the traffic; and
- (6) the Property was on the market for several years listed for \$98,500 then dropped to \$89,900.

Board's Rulings

Initially, the board was inclined to grant an abatement to a value of approximately \$63,000 to further recognize some of the negative factors

inherent in the Property. However, after lengthy deliberations and review of the evidence, the board is not convinced the Town's current assessment of \$75,000 is excessive and does not adequately reflect the Property's negative factors. Is it possible that the Property may be overassessed? Yes, however, for the following reasons the board was not adequately convinced by the evidence submitted that the \$75,000 assessment was disproportionate.

First, the board has remaining questions as to the accuracy of the Chapman appraisal which arrived at a value conclusion of \$47,000. The appraisal relied on four sales that were either estate or bank sales. While the Taxpayer and his appraiser adequately explained that these were the only two-family sales that existed and that they had been marketed through realtors

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for adequate time, the board still has lingering questions as to whether they indeed are representative of the market value of the Property. Both sides testified that there were very limited sales in Peterborough of two-family dwellings. However, the board notes that the Property was originally a single-family home with a basement apartment added at a later time. A comparison could have been made to single-family home sales with adjustments made for the presence of the apartment. However, neither the Taxpayer nor his appraiser submitted any evidence of single-family sales. To get a sense of the single-family sales occurring in Peterborough, the board reviewed the department of revenue administration's 1995 equalization ratio study (copy of residential land and buildings study attached). This study of residential land and buildings contained 51 qualified sales with 22 having sale prices less than \$100,000 and only six having sales prices of less than \$75,000.

While certainly this is not conclusive evidence of the market for the Property, it does paint a broad picture of the residential real estate market in Peterborough being generally above the \$47,000 value in the Chapman appraisal. It also raises questions of whether the market value finding of \$47,000 is reasonable without further analysis.

The Taxpayer stated the Property had been listed on the market from 1992 to 1995 starting at \$98,500 and reduced to \$89,900 with no offers. Based on the evidence, these asking prices appear too high to attract any significant attention. The Taxpayer did not list the Property at a price close to the assessment under appeal, nor certainly at the value estimated by the Chapman appraisal. Thus, the board was unable to give the lack of any purchase offers any weight.

The Property certainly has significant factors affecting its marketability (traffic, driveway easements, sewer easements, topography, utility of lot, physical condition of the house, etc.). The Town testified these factors were considered in the assessment, especially in the 1995

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abatement from \$81,600 to \$75,000. Consequently, the board is not convinced the Town's assessment did not adequately recognize the locational and physical problems of the Property.

In short, the Taxpayer failed to carry his burden to convincingly show the \$75,000 assessment is excessive.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3;

TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Dennis J. Chapman, Agent for John A. Kaufhold,

Taxpayer; and Chairman, Selectmen of Peterborough.

Date: May 21, 1997

Valerie B. Lanigan, Clerk

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ORDER

Before the board responds to the Taxpayer's motion for reconsideration (Motion), the board has asked its appraiser (RSA 71-B:14) to review the Property and file and submit an estimate of value. The parties will receive copies of his report once filed with the board and will be allowed a period of time to file any comments. The board will then respond to the Taxpayer's Motion.

The board apologizes for the time this appeal had taken. However, the evidence available does not result in an easy clear-cut decision. The board's decision to involve its appraiser at this point is our desire to get the right answer.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Dennis J. Chapman, Agent for John A. Kaufhold, Taxpayer; and Chairman, Selectmen of Peterborough.

Date: July 11, 1997

Valerie B. Lanigan, Clerk

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